

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN JOSE DIVISION

11 Ryan Investment Corp., No. C-06-03219 JW

12 Plaintiff,

13 v. **PRELIMINARY PRETRIAL  
CONFERENCE SCHEDULING ORDER -  
(BENCH TRIAL)**

14 Pedregal De Cabo San Lucas, et al.,

15 Defendants.

16  
17 On March 24, 2008, the Court conducted a Preliminary Pretrial Conference. The Court  
18 orders the parties to comply with the following:**TRIAL SCHEDULE**

<b>Final Pretrial Conference at 3 p.m. (¶4 )</b>	<b>October 20, 2008</b>
<b>Joint Final Pretrial Conference Statement and <i>In Limine</i> Motions Due (30 days before Final Pretrial Conference)</b>	<b>September 19, 2008</b>
<b>Bench Trial Date and Sessions<sup>1</sup></b>	<b>November 4-7, 2008 November 12-13, 2008 November 18-20, 2008</b>

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26       <sup>1</sup> Bench trials are held in afternoon sessions from 1:00pm to 4:00pm, Tuesdays through  
27 Fridays unless the Court otherwise specifies. At the Final Pretrial Conference, the Court reserves  
28 the right to fold the last few afternoon sessions into morning sessions (9:00am - 12:00pm) thus  
creating full days for trial. The final trial schedule will be confirmed at the Final Pretrial  
Conference.

**Meet and Confer Requirement**

1           1. No later than 30 days prior to the Final Pretrial Conference, the parties shall meet and  
2 confer with respect to the Joint Pretrial Conference Statement, submission of a joint list of witnesses,  
3 a joint list of trial exhibits and a joint list of discovery material which each party intends to offer in  
4 evidence as a part of its case-in-chief. Unless objections are made in accord with this Order, all  
5 witnesses, exhibits and discovery material contained on the joint submission shall be deemed  
6 admissible into evidence by stipulation.

**Objections and Lodging Disputed Material with the Court**

7           2. If a party objects to receipt into evidence of a witness, exhibits or discovery response,  
8 the party shall advise all opposing parties during the conference described in paragraph 1, and  
9 attempt to resolve the dispute. If the parties are unsuccessful in resolving the dispute, any party  
10 wishing to object to receipt of the testimony of any witness, any exhibit or discovery response into  
11 evidence shall lodge with Chambers a copy of the disputed material at the commencement of trial.  
12 Attached to the submission shall be a brief statement of the objection and any response by the  
13 proffering party. The Court will indicate on the submitted copy whether the objection is overruled  
14 or sustained and return the material to counsel.

**Lodging Joint Pretrial Conference Statement and *In Limine* Motions**

15           3. Pursuant to the date set forth in the Case Schedule, the parties shall file and lodge  
16 with Chambers the following:

17           a. Joint Pretrial Conference Statement: The parties shall file a joint pretrial  
18 statement which shall contain the following information: (1) a brief description of  
19 the substance of claims and defenses which remain to be decided; (2) a detailed  
20 statement of all the relief claimed, particularly itemizing all elements of damages  
21 claimed as well as witnesses, documents or other evidentiary material to be presented  
22 concerning the amount of those damages; (3) a plain and concise statement of all  
23 relevant facts not reasonably disputable, as well as which facts the parties will  
24 stipulate for incorporation into the trial record without the necessity of supporting  
25  
26  
27

1                   testimony or exhibits; (4) a plain and concise statement of all disputed factual issues  
2 which remain to be decided; (5) a statement assessing whether all or part of the action  
3 may be presented upon an agreed statement of facts; (6) a statement of stipulations  
4 requested or proposed for pretrial or trial purposes; (7) without extended legal  
5 argument, a concise statement of each disputed point of law concerning liability or  
6 relief, citing supporting statutes and decisions; (8) a list of all witnesses likely to be  
7 called at trial; (9) a list of evidence the parties intend to present at trial through use of  
8 excerpts from depositions, from interrogatory answers, or from responses to requests  
9 for admission; and (10) any other subjects relevant to the trial of the action, or  
10 material to its just, speedy and inexpensive determination. **Counsel are directed to**  
11 **meet and confer in advance of the date for submission of pretrial material with**  
12 **respect to the pretrial conference statement.**

13                 b.     *In Limine* Motions: Any *In limine* motions shall be filed in writing and  
14 submitted along with the Joint Final Pretrial Conference Statement. Any opposition  
15 shall be filed in writing no later than 10 days before the Final Pretrial Conference.  
16 **Five (5)** days before the date of the Final Pretrial Conference, the parties shall  
17 organize their **in limine** motions as follows:

- 18                 (1)    Each side shall be responsible for producing a combined folder with all of  
19                    *their* in limine motions, oppositions to their motions (if any), and replies (if  
20                    any), respectively. The motion papers shall be clearly marked and separated  
21                    in one single binder. The binder shall contain a table of contents, listing each  
22                    motion with a short sentence regarding the grounds for in limine and a short  
23                    sentence regarding the opposition; all statements must be supported by proper  
24                    citations to the motions. **The table of contents shall also be saved on a 3½**  
25                   **floppy disk in MS Word or WordPerfect format to be attached inside the**  
26                   **binder.**
- 27                 (2)    Please note that this binder is not a substitute for filing the motions and  
28                    related papers via ECF; it is designed for the Court to evaluate the motions.  
29                    Two copies of the binder shall be delivered to the Court (by way of the  
30                    Clerk's Office) no later than **five (5) days before the date of the Final**  
31                   **Pretrial Conference by 4 PM.** The parties must also bring the binder to the  
32                    Final Pretrial Conference for their own references.
- 33                 (3)    These motions will be deemed submitted without oral argument, unless the  
34                    Court orders otherwise.

**Final Pretrial Conference**

4. The Court will conduct a Final Pretrial Conference on the date set forth in the Case Schedule. The trial attorneys must attend the conference. At the final pretrial conference the Court will consider issues raised in the Final Pretrial Conference Statement, motions *in limine* and discuss the procedures for trial of the case.

**Lodging Witness Lists, Exhibit Lists**

5. At the Final Pretrial Conference, the parties shall lodge with Chambers the joint list of witnesses, and a joint list of exhibits. Unless otherwise ordered, all exhibits shall be in a format compatible with either the video or digital evidence presentation system utilized by the Court. The proffering party shall retain custody of all exhibits, schedules, summaries, diagrams or charts to be used at the trial.

6. Upon request, in noncomplex cases the court will excuse the parties from using electronic formatted documents. In that event on the first day of trial, the parties shall submit exhibits as follows:

- a. A copy for the trial judge;
- b. A copy for the witness stand. Although the Court's copy of exhibits shall be in a single binder, the Court prefers the parties to prepare a binder for each witness, which contains only those documents pertinent to that witness.
- c. No duplicates of a document shall be submitted, unless the duplicate copy has independent evidentiary value to prove some disputed issue of material fact (e.g., date stamp to prove receipt on a particular date, where date of receipt is a disputed issue of a material fact).

**Proposed Findings (Nonjury Trials)**

7. In nonjury trials, on the first day of trial, each party shall submit its proposed findings of fact and conclusions of law.

**Bench Trial Schedule**

8. The time allowed for trial shall be divided equally between the plaintiff's side and the defendant's side. Co-parties are ordered to meet, confer and agree to an allocation among themselves. A party may spend its allocated time presenting its own case or on cross-examination of witnesses called by other parties or for presentation of a counterclaim. When a party's allocated time period has expired, unless otherwise ordered for good cause shown, no further time will be allowed to that party if it would interfere with the ability of the opposing party to present its case.

**Trial Procedure**

9. In opening statements, counsel shall not express personal knowledge or opinion concerning any matter in issue.

10. Counsel must question witnesses from the podium, using the microphone. Without requesting permission, counsel may approach witnesses for any proper purposes.

11. Address all remarks to the Court, not to opposing counsel.

12. Refer to all persons, including witnesses, other counsel and the parties by their surnames and not by their first or given names.

13. In examining a witness, counsel shall not repeat or echo the answer given by the witness.

14. Counsel must stand when making an objection.

15. Conferences at the bench or sidebar are not favored by the Court. Any sidebar conferences which are allowed will be off the record. If any counsel wishes to place matters on the record, he or she may so request, and the Court will make a responsive order.

16. Counsel have full responsibility to arrange for the appearance of witnesses during the presentation of their case so as to eliminate delay caused by waiting for witnesses who have been placed on call by counsel.

17. Unless an agreement to the contrary is entered into by opposing counsel, all nonparty or nonexpert witnesses will be excluded from the courtroom when not testifying. When a witness has completed his or her testimony, the witness is excused unless counsel indicates that he

1 or she wishes the witness to remain subject to being recalled. Any witness who has been excused  
2 from further testimony may remain as a spectator. It will be the responsibility of counsel to make an  
3 announcement at the time the witness steps down that he or she should remain in the environs of the  
4 Court for a reasonable time to permit such counsel an opportunity to secure and serve a subpoena  
5 upon the witness and assume responsibility for his or her per diem and other expenses as provided  
6 by governing rule or statute.

7       18.      Counsel shall admonish all persons at counsel table that gestures, facial expressions,  
8 audible comments, or the like, as manifestations of approval or disapproval during the testimony of  
9 witnesses, or at any other time, are prohibited.

10       19.      Witness examination shall consist of direct examination, cross-examination and re-  
11 direct examination. No recross-examination will be allowed without prior approval of the Court  
12 specifically indicating the area for recross-examination. When there are multiple defense counsel,  
13 they are directed to confer and designate to the Court the sequence in which they wish to be  
14 recognized during trial for purposes of presenting opening statements and conducting cross-  
15 examination of witnesses. If one counsel conducts the direct examination of a witness, that same  
16 counsel must make objections when the witness is cross-examined. Counsel who will conduct the  
17 cross-examination should object while the witness is on direct.

18       20.      After the commencement of trial testimony, upon request of co-parties, any  
19 objection, motion or other application for relief made by any co-party, orally or in writing, shall be  
20 deemed to be adopted and joined in by every other co-party, without announcement by counsel to  
21 that effect, and the rulings of the Court shall be deemed applicable to each party unless otherwise  
22 stated at the time the ruling is made. Accordingly, it shall be regarded as unnecessary and improper  
23 for counsel to rise to "join in" an objection or motion. Rather, counsel should rise to be heard only  
24 for the purpose of expressly opting out of an objection or motion if that is his or her position.

25       21.      Counsel are directed to deliver to opposing counsel at the end of each trial day (if  
26 not earlier) a list of witnesses counsel anticipates calling the next trial day.

1       22. Counsel calling a non-client witness to testify should have no further discussions  
2 with that witness concerning the case or any aspect of his or her testimony after the witness has been  
3 tendered for cross-examination and until such time as the witness has been tendered back for redirect  
4 examination. At all other times, within the bounds of governing ethics and the law, counsel may  
5 engage in discussions with witnesses during trial.

6        23. Any time taken away from presentation of evidence to the trier of fact due to, for  
7 example, lengthy legal motions made during the time allocated to the presentation of evidence, or  
8 delays in the commencement of proceedings due to circumstances within the control of counsel, will  
9 be deducted from the time allocated for the presentation of evidence. Upon timely application based  
10 upon good cause, the Court may relieve a party of its stipulation to the agreed schedule.

11           24. It is the practice of the Court periodically to inform counsel of the Court's record of  
12 how much time each side has remaining for the presentation of evidence based upon the stipulated  
13 trial schedule.

## Daily Trial Transcript

15        25. Any counsel desiring daily or expedited transcripts during trial should make  
16 immediate arrangements with the court reporter and should inform the Court and other counsel of  
17 such intentions.

19 || Dated: March 28, 2008

James Ware  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 George John Berger [gberger@allenmatkins.com](mailto:gberger@allenmatkins.com)  
3 Mark Aloysius O'Connor [oconnor@horanlegal.com](mailto:oconnor@horanlegal.com)

4 **Dated: March 28, 2008**

**Richard W. Wieking, Clerk**

5 **By:** /s/ JW Chambers  
6 **Elizabeth Garcia**  
7 **Courtroom Deputy**